IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 396 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDHA S NAIR - Petitioner(s)

Versus

M.S.UNIVERSITY & 2 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1,3.
MR MITUL K SHELAT for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 19/07/2005

ORAL JUDGMENT

1. Rule. Shri Mitul K. Shelat, learned advocate waives service of rule on behalf of the respondent.

2. In this petition under Article 226 of the Constitution of India, the main relief which is prayed for by the petitioner is for quashing and setting aside the action of the respondent in not releasing appointment letter / order to the petitioner for the post of Teaching Assistant in the Department of Commerce including business administration. It is the case of the petitioner that the petitioner was selected for the post of Teaching Assistant in the Department of Commerce including business administration after due selection by the Selection Committee and thereafter the petitioner was issued oral instructions by the respondent No.3 to join her duties and accordingly she joined duties on 14th August, 2004 and continued to serve upto 6th December, 2004. It is submitted that though she was selected by the Selection Committee after following due procedure, there is no reason not to issue appointment letter to the petitioner. As the services of the petitioner came to be terminated on 7.12.2004, by way of amendment the petitioner has also prayed for an appropriate writ, order or direction directing the respondent authorities to permit her to discharge her duties on the post of Teaching Assistant.

3. Shri Suthar, learned for Shri N.K.Majmukdar, learned advocate appearing on behalf of the petitioner has submitted that when the petitioner is selected by the Selection Committee for the post of

Teaching Assistant, there is no reason not to issue appointment order in favour of the petitioner. It is further submitted that in fact, the petitioner was orally directed to resume duties and accordingly the petitioner has resumed duty and was working and all of sudden, services of the petitioner came to be discontinued with effect from 7.12.2004. It appears that the petitioner has not secured 55 % of marks in M.Com. Degree, the petitioner has not been issued appointment order. It is further submitted by him that in fact, other persons are already appointed who are having 60 % of marks in M.B.A which is considered to be equivalent and therefore, it is requested to allow the present special civil application.

4. Shri Mitul K. Shelat, learned advocate appearing on behalf of the respondent has submitted that after selection and before any appointment order can be issued, it was found that the petitioner is lacking in qualification and not fulfilling the requisite qualification, means, not having 55 % of marks in Business Administration i.e not meeting with the criteria of 55 % in relevant discipline (Commerce) in which she was being considered for appointment and therefore, no appointment order was issued. It might be that she might have worked on ad hoc basis without there being any appointment order, however, when it was found that she is not having requisite qualification and / or meeting with

requisite qualification, the authority was justified in not issuing the appointment letter. He has further submitted that merely because she was selected by the Selection Committee that does not mean that inspite of the fact that she is not having requisite criteria and/ or qualification, she should be actually appointed. It is also further submitted that now fresh advertisement is already issued inviting applications for filling up the post in question and the petitioner has already applied for the said post and her case can be considered on merits if found to be eligible, and therefore, it is requested to dismiss the present special civil application.

5. It is not in dispute that the requisite criteria and qualification for the post of Teaching Assistant is 55 % marks in the relevant discipline i.e commerce. It is also not in dispute that case of the petitioner was being considered for appointment on the post of Teaching Assistant in the Department of Commerce. Though, it is submitted that the other persons are appointed having 60 % marks in M.B.A, though not possessing 55% marks in Master Degree, no particulars are given by the petitioner in the present special civil application. Therefore, in absence of specific instances, contention of the petitioner with regard to discriminatory treatment cannot be considered. In view of the fact that the petitioner

has passed M.Com Degree with 53.59 % of marks, which is obviously less than 55 % of marks i.e less than a criteria so prescribed, fact remains the petitioner is not fulfilling the criteria of having 55 % marks in the relevant discipline (Commerce) in which she was being considered for appointment. Under the circumstances, even if she was selected by the Selection Committee inspite of the fact that she is not having / fulfilling the criteria, then the respondents are justified in not issuing any appointment order. After selection and before issuance of appointment order, on verification it was found that the petitioner is not fulfilling the requisite criteria and therefore, appointment order is not issued, said action of the respondent can not be said in any illegal and/or arbitrary or discriminatory which requires interference of this Court while exercising the powers under Article 226 of the Constitution of India. Merely selection of the petitioner by the selection committee does not confer and vest any right in favour of the petitioner for appointment.

6. Under the circumstances there is no substance in the present special civil application which requires to be dismissed. However, it is required to be noted that pursuant to the fresh advertisement, the petitioner has already applied for the post of Teaching Assistant and under the circumstances, the respondents are directed to consider the

case of the petitioner on merits and if found eligible and on fulfillment of all the criteria in accordance with law.

7. In view of aforesaid observations and direction, the present special civil application is dismissed. Rule is discharged with no order as to costs.

[M.R.Shah, J.]

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